

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

LEMOORE UNION ELEMENTARY SCHOOL DISTRICT,

V.

PARENT ON BEHALF OF STUDENT.

CASE NO. 2022080193

DECISION

June 21, 2023

On August 5, 2023, the Office of Administrative Hearings, called OAH, received a due process hearing request from Lemoore Union Elementary School District, naming Student. On February 1, 2023, OAH granted Lemoore Union's motion to amend its complaint. On March 7, 2023, OAH granted Student's request to continue the due process hearing. Administrative Law Judge Cynthia Fritz heard this matter on April 25, 26, 27, and 28, 2023, and May 1, 2, 3, 4, 5, 8, 9, 10, and 11, 2023.

Attorneys Elizabeth Rho-Ng and Adrienne Nichelini represented Lemoore Union. Assistant Superintendent of Special Services John Raven attended all hearing days on Lemoore Union's behalf. Attorney Taymour Ravandi represented Student. Attorneys Amanda Miller and Lauren-Ashley Mendez assisted Ravandi. Parent attended all hearing days on Student's behalf.

At the parties' request, the undersigned continued the matter to June 13, 2023, for closing briefs. The record was closed and the matter submitted on June 13, 2023.

## ISSUE

Did Lemoore Union Elementary School's Individualized Education Program, dated March 29, 2022, and continued to May 25, 2022, and June 28, 2022, and amended on August 9, 2022, and January 30, 2023, offer Student a free appropriate public education such that Lemoore Union may implement it without parental consent?

## JURISDICTION

This hearing was held under the Individuals with Disabilities Education Act, called IDEA, its regulations, and California statutes and regulations. (20 U.S.C. § 1400 et. seq.; 34 C.F.R. § 300.1 (2006) et seq.; Ed. Code, § 56000 et seq.; Cal. Code Regs., tit. 5, § 3000 et seq.) The main purposes of the IDEA are to ensure:

- all children with disabilities have available to them a free appropriate public education, called FAPE, that emphasizes special education and related services designed to meet their unique needs and prepare them for further education, employment, and independent living, and
- the rights of children with disabilities and their parents are protected. (20 U.S.C. § 1400(d)(1); See Ed. Code, § 56000, subd. (a).)

The IDEA affords parents and local educational agencies the procedural protection of an impartial due process hearing with respect to any matter relating to the identification, assessment, or educational placement of the child, or the provision of a FAPE to the child. (20 U.S.C. § 1415(b)(6) & (f); 34 C.F.R. § 300.511 (2006); Ed.

Code, §§ 56501, 56502, and 56505; Cal. Code Regs., tit. 5, § 3082.) The party requesting the hearing is limited to the issues alleged in the complaint, unless the other party consents, and has the burden of proof by a preponderance of the evidence. (20 U.S.C. § 1415(f) (3)(B); Ed. Code, § 56502, subd. (i); *Schaffer v. Weast* (2005) 546 U.S. 49, 57-58, 62 [126 S.Ct. 528, 163 L.Ed2d 387]; and see 20 U.S.C. § 1415(i)(2)(C)(iii).) Here, Lemoore Union filed this matter and bore the burden of proof. The factual statements in this Decision constitute the written findings of fact required by the IDEA and state law. (20 U.S.C. § 1415(h)(4); Ed. Code, § 56505, subd. (e)(5).)

Student was 10 years old and in fourth grade at the time of hearing. Student enrolled in Lemoore Union in August 2020, during Student's second grade school year. Student resided within Lemoore Union's geographic boundaries during the relevant time at issue. On February 1, 2021, Lemoore Union qualified Student for special education and related services under the primary category of other health impairment and the secondary category of hard of hearing.

#### Student's needs included

- math,
- reading,
- writing,
- social-emotional,
- self-advocacy,
- attention, and
- hearing assistance.

Student suffered from

- Goldenhar syndrome,
- moderate severe conductive hearing loss,
- attention deficit hyperactivity disorder,
- social anxiety,
- asthma, and
- sleep apnea.

Student used bilateral bone conductive bone anchored hearing devices, a personal frequency-modulated hearing system, and a mini microphone for hearing assistance. Student participated in home hospital instruction beginning August 2021, through the time of the hearing.

ISSUE: DID LEMOORE UNION ELEMENTARY SCHOOL'S INDIVIDUALIZED EDUCATION PROGRAM, DATED MARCH 29, 2022, AND CONTINUED ON MAY 25, 2022, AND JUNE 28, 2022, AND AMENDED ON AUGUST 9, 2022, AND JANUARY 30, 2023, OFFER STUDENT A FAPE SUCH THAT LEMOORE UNION MAY IMPLEMENT IT WITHOUT PARENTAL CONSENT?

Lemoore Union contends that its March 29, 2022, individualized education program, called IEP, offer, which it maintains spanned over three IEP team meetings on March 29, May 25, and June 28, 2022, and included IEP amendments dated August 8, 2022, and January 30, 2023, legally complied with all procedural and substantive IDEA requirements. Further, if Lemoore Union committed any procedural deficiencies, it

contends that they did not constitute a substantive FAPE violation. Thus, it argues, OAH should order Lemoore Union be allowed to implement the January 30, 2023 amendment IEP offer, without parental consent.

Student asserts that Lemoore Union's January 30, 2023 IEP offer was a new FAPE offer and it failed to comply procedurally and substantively with the IDEA. Specifically, Student maintains that Lemoore Union

- procedurally failed when it undermined the annual IEP review process,
- made substantive changes outside of an IEP team meeting,
- disregarded parental participation, and
- predetermined the offer.

Substantively, Student maintains that it also offered inappropriate placement , services, and supports. Student argues, the January 30, 2023 IEP offer, the offer it wishes to implement, failed to offer Student a FAPE, and should not be implemented without parental consent.

In general, an IEP is a written statement for each child with a disability that is developed with the participation of parents and school personnel that describes the child's needs, academic and functional goals related to those needs, and the student's special education program and related services. (20 U.S.C. §1414(d)(1)(A); Ed. Code, §§ 56032, 56345, subd. (a).) If the parent refuses to consent to an IEP program component necessary to provide student a FAPE, after previously consenting to special education for the student, the local educational agency must file a due process hearing request. (Ed. Code, § 56346, subd. (f); *I.R. v Los Angeles Unified School Dist.* (9th Cir. 2015) 805 F.3d 1164, 1167-1168.)

Here, Lemoore Union held IEP team meetings on March 29, May 25, and June 28, 2022, and offered Student a special education program. On August 3, 2022, Student partially consented to the IEP offer but disputed the placement offer, among other things. Thus, on August 5, 2022, Lemoore Union filed its due process hearing request to implement its IEP offer without parental consent because Parent refused to consent to a necessary portion of the IEP offer, Student's placement.

When a school district seeks to demonstrate that it offered a FAPE to a particular student, it must first show that it complied with the procedural requirements of the IDEA. (*Board of Education of the Hendrick Hudson Central School Dist. v. Rowley* (1982) 458 U.S.176, at pp. 206-207)(*Rowley*.) Second, the school district must show that the IEP developed through those procedures was designed to meet the child's unique needs and reasonably calculated to enable the child to make progress appropriate in light of their circumstances. (*Ibid.*; *Endrew F. v. Douglas County School Dist. RE-1* (2017) 580 U.S. 386, [137 S.Ct. 988, 998-999])(*Endrew F.*)

## PROCEDURAL COMPLIANCE

The IDEA delineates numerous procedural IEP team meeting and IEP document requirements that a school district must follow, and places great importance on procedural compliance. (20 U.S.C. § 1415 et seq.)

"When the elaborate and highly specific procedural safeguards embodied in § 1415 are contrasted with the general and somewhat imprecise substantive admonitions contained in the Act, we think that the importance Congress attached to these procedural safeguards cannot be gainsaid. It seems to us no exaggeration to say that Congress placed every bit as much emphasis

upon compliance with procedures giving parents and guardians a large measure of participation at every stage of the administrative process, see, e.g., §§ 1415(a)-(d), as it did upon the measurement of the resulting.” (Rowley, supra, 458 U.S. at pp. 205.)

Procedural inadequacies such as denying meaningful IEP parental participation in the IEP formulation process deny a student a FAPE. (*Amanda J. v. Clarke County Sch. Dist.* (9th Cir. 2001) 67 F.3d 877, 892.)

LEMOORE UNION FAILED TO MEET ITS BURDEN OF PROVING  
PROCEDURAL COMPLAINT AS TO ITS JANUARY 30, 2023 IEP OFFER  
THAT IT SEEKS TO IMPLEMENT WITHOUT PARENTAL CONSENT.

An IEP is a written document for each disabled child must include a statement of the child’s present levels of academic achievement and functional performance, including how the child’s disability affects the child’s involvement and progress in the general education curriculum. (20 U.S.C. § 1414(d)(1)(A); 34 C.F.R. § 300.320 (2007).) An IEP must also contain a statement of measurable annual goals designed both to meet the individual’s needs that result from the individual’s disability to enable the pupil to be involved in and make progress in the general curriculum; and meet each of the pupil’s other educational needs that result from the individual’s disability. (20 U.S.C. § 1414(d)(1)(A)(i)(II); 34 C.F.R. § 300.320 (2007); Ed. Code, § 56345, subd. (a)(2).) Annual goals are statements that describe what a child with a disability can reasonably be expected to accomplish within a 12-month period in the child’s special education

program. (*Letter to Butler*, 213 IDELR 118 (OSERS 1988); U.S. Dept. of Educ., Notice of Interpretation, Appendix A to 34 C.F.R., part 300, 64 Fed. Reg., pp. 12,406, 12,471 (1999 regulations).)

An IEP must further include

- a statement of the special education, related services, and supplementary aids and services, based on peer-reviewed research to the extent practicable; and
- program modifications or supports that will be provided to the student to advance in attaining the goals, make progress on the general education curriculum, and participate in education with disabled and non-disabled peers. (20 U.S.C. § 1414(d)(1)(A)(i)(IV); 34 C.F.R. § 300.320(a)(4) (2007); Ed. Code, § 56345, subd. (a)(4).)

The IEP document must also include projected service and modification start dates, and the anticipated frequency, location, and duration of services and modifications. (20 U.S.C. § 1414(d)(1)(A)(i)(VII); 34 C.F.R. § 300.320(a)(7) (2007); Ed. Code § 56345, subd. (a)(7).)

The IEP team meeting must include

- one or both of the student's parents or their representative;
- a regular education teacher if a student is, or may be, participating in the regular education environment;
- a special education teacher;



- a school district representative who is qualified to provide or supervise specially designed instruction to meet the unique needs of children with disabilities and is knowledgeable about the general education curriculum and about available resources; and
- an individual who can interpret assessment results and its instructional implications. (34 C.F.R. § 300.321(a) (2007).)

It is undisputed that on March 29, 2022, Lemoore Union held Student's annual IEP team meeting, and that Lemoore Union knew Student's next annual IEP team meeting was due before March 29, 2023. On March 29, 2022, Student's annual IEP meeting commenced but was not completed, so Lemoore Union continued it to May 25, 2022. On May 25, 2022, the continued IEP team meeting convened and the IEP team made a FAPE offer to Student, including placement at the Kings County Office of Education deaf and hard of hearing special day classroom. Parent, however, wished to visit the placement, so the meeting was continued to June 28, 2022, to allow Parent time to observe the program.

On June 28, 2022, Lemoore Union convened the continued IEP team meeting to discuss the placement and finalize the IEP offer. Parent discussed concerns with the Kings County Office of Education deaf and hard of hearing special day class located about 15 miles away from Student's neighborhood school. Parent wanted Student educated in a general education classroom with special education supports and services.

After a discussion, Lemoore Union made the same FAPE offer to Student. The March 29, March 25, June 28, 2022 IEP offer, referred to as the March 2022 IEP offer included:

- the Kings County Office of Education deaf and hard of hearing special day class as Student's placement;
- eight annual goals in the areas of positive self-concept, math, reading/writing, writing, social-emotional, and self-advocacy, with short-term objectives in June 2022 and November 2022, implemented through March 2023;
- 100 minutes weekly of individual/group specialized academic instruction from March 29, 2022, with no end date, in a regular classroom/public day school provided by the school district of service during Student's home hospital instruction;
- 912 minutes weekly of individual/group specialized academic instruction from August 8, 2022, through March 28, 2023, in a regular classroom/public day school provided by the school district located in the county deaf and hard of hearing special day class;
- 270 minutes weekly individual/group specialized academic instruction from August 8, 2022, to March 28, 2023, in a regular classroom/public day school provided by the school district for push in and pull out support;
- 30 minutes monthly of individual counseling and guidance services in a regular classroom/public day school provided by the school district from November 2, 2021, through January 31, 2022;

- 40 minutes monthly of individual deaf and hard of hearing services, push in or pull out services, provided by the Special Education Local Plan Area in a separate classroom in a public integrated facility, from February 1, 2022, through January 31, 2023;
- 360 minutes yearly of deaf and hard of hearing services, push in or pull out services, provided by the Special Education Local Plan Area in a separate classroom in a public integrated facility, from February 1, 2022, through January 31, 2023; and
- numerous program accommodations and other supports with start dates of March 29, 2022, and end dates of March 28, 2023.

On August 3, 2022, Parent partially consented to this offer but did not agree to the placement, lack of speech and language and physical therapy services, some goals, and the IEP documentation, among other things. Lemoore Union soon after agreed to conduct independent speech and language, physical therapy, and deaf and hard of hearing assessments. It filed for due process on August 5, 2022, to defend its IEP offer.

Then, on August 8, 2022, it amended its IEP offer to correct the counseling dates and eliminate the home hospital instruction which would expire on August 31, 2022. On August 30, 2022, Parent provided a new home hospital instruction request signed by a physician, which then extended home hospital instruction through August 2023.

Despite Lemoore Union attempting to set up IEP team meetings in August, September, October, and November 2022, Parent refused to attend. However, Lemoore Union made no attempts to convene any IEP team meeting for Student from June 29, 2022, through January 31, 2023.

On January 24, 2023, Parent provided Lemoore Union with a renewed request for home hospital instruction through January 2024. On January 24, 2023, it drafted a Notice of Meeting for Student's annual IEP team meeting set for February 20, 2023.

Lemoore Union attempted to speak with Parent from January 27, 2023, through January 30, 2023, as ordered by OAH, to discuss witnesses and evidence for the due process hearing in this matter that was scheduled to begin February 7, 2023, and to discuss its draft motion to amend the complaint. Parent refused to meet with them until counsel was retained. However, throughout these attempts, including phone calls and text messages, Lemoore Union failed to give any notice to Parent that it would also be changing its IEP offer to Student.

On January 30, 2023, Lemoore Union's Assistant Superintendent of Special Services John Raven, and special education teacher, school psychologist and Student's case manager Yvonne Galindo changed Student's IEP without a meeting or notice to Parent or any other Lemoore Union staff. According to the IEP amendment document, the purpose of the amendments were to

- make corrections to clarify Lemoore Union's FAPE offer including the start and end dates of the goals, services, and program accommodations and other supports,
- update the emergency circumstances page,
- change the 912 minutes of specialized academic instruction to reflect that it will take place in separate classroom in a public facility, and
- remove Parent and Student as the persons responsible for implementing Student's goals.

Galindo attempted to drop off the IEP changes with a prior written notice at Parent's residence in the late afternoon of January 30, 2023, but was unable to make contact. The next day, Parent agreed to meet with Galindo to pick up unspecified school documents at the school district. Raven, Galindo, and Lemoore Union's outside counsel attempted to meet with Parent on January 31, 2023, to discuss the IEP changes, request to amend the complaint, and the home hospital documentation to Parent. Parent did not want to meet with Lemoore Union attorneys but met with Raven and Galindo. They explained the new IEP offer to Parent and tried to convince Parent to consent to it to avoid going to due process hearing the following week. Parent was unaware until January 31, 2023 meeting of the new IEP offer that Raven and Vera-Galindo developed for Student.

Raven and Galindo unilaterally changed the IEP offer on January 30, 2023, as follows:

- changed the start and end dates of the eight annual goals from March 2022 through March 2023 to January 2023 through January 2024;
- changed the start and end dates of the 912 minutes weekly of individual/group specialized academic instruction from August 8, 2022, through March 28, 2023, to January 30, 2023, through January 29, 2024;
- changed the start and end dates of the 30 minutes monthly of individual counseling and guidance services from February 1, 2022, and ending March 28, 2023, to January 30, 2023, through January 29, 2024;
- changed the start and end dates of the 40 minutes monthly of individual deaf and hard of hearing services, push-in or pull-out services, from February 1, 2022, through January 31, 2023, to January 30, 2023, to January 29, 2024;

- changed the start and end dates of all program accommodations from March 29, 2022, through March 28, 2023, to January 30, 2023, through January 29, 2024;
- changed the start and end dates of all supports from March 29, 2022, through March 28, 2023, to January 30, 2023, through January 29, 2024;
- removed Parent and Student as the responsible parties for implementing Student's goals;
- removed the service of 100 minutes weekly of individual/group specialized academic instruction from March 29, 2022, to August 31, 2023, in a regular classroom/public day school provided by the school district of service during Student's home hospital instruction;
- changed the location of the 912 minutes of specialized academic instruction from a regular classroom/public day school provided by the school district located in the county deaf and hard of hearing special day class, to a separate classroom in a public integrated facility in the county deaf and hard of hearing; and
- added door-to-door transportation services.

## LEMOORE UNION CIRCUMVENTED THE ANNUAL IEP REVIEW PROCESS

The IDEA and California law require a district to meet periodically, but not less than annually to review the IEP and the student's educational progress, including whether annual goals are being met, the placement appropriateness, the reevaluation results conducted, information provided to or by the parents, the child's anticipated needs, and any other matters to make necessary IEP revisions. (20 U.S.C. § 1414

(d)(4); 34 C.F.R. § 300.324(b)(i)(ii) (2017); Ed. Code §§ 56343, subd. (d), 56380, subd. (a).)

Thus, an annual IEP team meeting must be held at least once per year and no longer than 12 months from the last yearly IEP team meeting to offer a student with disabilities a special education plan for the following year.

Here, on January 30, 2023, Raven and Galindo unilaterally changed the annual IEP date to January 2024, and changed all the goals, services, modifications, and support start and end dates to January 30, 2023 through January 29, 2024, without notice to Parent, other IEP team members, and without an IEP team meeting. By doing this, Student continued to have the same IEP offer from March 2022 through January 2024, for 22 months, and Lemoore Union unilaterally granted itself 10 extra months to hold Student's annual IEP review.

Raven described these changes as technical edits. Raven's attempts to minimize Lemoore Union's actions were unpersuasive. These changes were not technical edits or slight changes as argued in Lemoore Union's closing brief, and the changes were not to correct information inaccurately recorded in or omitted from a previous IEP document.

Rather, the January 30, 2023 IEP offer changed the annual IEP review date to January 2024, without having an annual IEP team meeting in January 2023. School districts can change annual review dates and change services and goals through the IEP meeting process, but not unilaterally by district staff members without an

- IEP team meeting,
- agreement from Parent to forego it, or
- documentation showings its attempts to allow Parent to participate in the IEP development process.

The IDEA predicates its entire statutory design on the development and revision of student's IEP annually. While Lemoore Union staked out a contrary position, it failed to set forth any supporting authority for its proposition sanctioning a FAPE offer covering a 22-month period, almost two full years. Lemoore Union allowed itself almost two years without an annual IEP review and Student with the same placement and related services.

Lemoore Union conceded no IEP team meeting was noticed or convened. Lemoore Union knew Student's annual IEP fell on or before March 29, 2023. It sent out Notice of Meeting for Student's annual IEP team meeting for February 20, 2023, only three weeks after it made this new offer to Student. Instead of conducting an annual IEP team meeting to review Student's present levels of performance, goals, program, newly completed assessments, and newly received home hospital instruction request, it unilaterally and substantively changed the timelines of the goals, services, accommodations, and other supports beginning January 30, 2023, through January 29, 2024, for an entire year, without an annual IEP review. This allowed for the new annual IEP date to convene over 10 months after the annual IEP meeting was due in March 2022, 22 months after the annual IEP team meeting originally convened. By doing this, Lemoore Union circumventing the IDEA annual IEP team meeting requirement.

IEP amendments are not meant to take of the place of an annual IEP meeting. The purpose of an IEP amendments are to make changes to a student's IEP during the time the IEP is in effect until the next annual IEP. By unilaterally changing the goals, services, supports, and modification timelines in Student's IEP, Lemoore Union created an entirely new IEP offer on January 30, 2023, and a new annual review date because it was beyond the legally required annual IEP review date. This violated IDEA's clear requirement for school districts to hold annual IEP team meeting review and was a procedural IDEA violation. Thus, it unilateral changed the IEP offer.



By unilaterally changing the annual IEP offer to January 24, 2024, and the goal, services, modification, and support dates to January 30, 2023 to January 29, 2024, a full year, Raven and Galindo developed a new annual IEP offer. This was done without an IEP team meeting, necessary IEP team members, and parental participation, as discussed more fully below, in violation of the IDEA.

### THE JANUARY 30, 2023 IEP OFFER TO STUDENT WAS SOLELY FOR LEGAL POSITIONING AND IT MISUSED THE AMENDMENT IEP PROCESS

After the annual IEP team meeting for the school year has resulted in an IEP, changes to the IEP may be made either by the entire IEP team or by amending the IEP rather than by redrafting the entire IEP. (20 U.S.C. §1414(d)(3)(F); ); 34 C.F.R. § 300.324 (a)(4) &(6) (2017); Ed. Code, § 56380.1.)

The purpose of an IEP amendment is to make changes to a student's IEP during the time the IEP is in effect until the next annual IEP team meeting. Although some IEP contents change, an IEP amendment does not change, replace, or extend the current IEP annual review date, and the next annual IEP team meeting must still be held no more than 365 days following the previous annual review date. (20 U.S.C. §1414(d)(4)(A)(i); 34 CFR §300.324(b)(1)(i) (2017); Ed. Code, § 56380, subd. (a)(1).) Lemoore Union failed to offer any authority to the contrary.

Galindo explained that the January 30, 2023 IEP offer was necessary to "push out" the dates of Student's goals because "her IEP was due March 28 [2023] ... [s]o we

wanted to make sure that ... her goals did not expire along with her IEP.” Raven also described the reasoning behind the January 30, 2023 IEP offer, and stated the timelines were extended “[d]ue to the unique circumstances and all the delays in being able to get to [the due] process] hearing.”

Raven further explained that they, Raven and Galindo, decided to do this because the due process hearing was set for February 7, 2023, and Raven knew the IEP timelines would soon expire in March 2023. So, they “extended” the dates from January 30, 2023, through January 29, 2024, so that the OAH administrative law judge could implement the IEP without it expiring before OAH could issue its decision. And it also wanted to do this to account for Student’s latest home hospital request through January 2024.

Thus, Lemoore Union’s January 30, 2023 IEP offer was for legal positioning rather than based upon Student’s individual needs, and it failed to provide any authority for what they continued to call “extending” the IEP goals, services, modifications, and supports beyond the annual IEP review date through an amendment.

In March 2022 when the Student’s annual IEP convened, Student was at the end of third grade. By January 2024, the new annual IEP date set by Raven and Galindo meant Student would have gone through the end of third grade, fourth grade, and half of fifth grade without an annual IEP meeting since Lemoore Union inexplicably determined it could unilaterally and privately change the annual review date to January 30, 2024. Student’s needs may have significantly changed over the 22 months, as Student was in

a different school year and grade and approaching middle school. Student was deprived of a new annual IEP meeting with participation and input from the IEP team, including

- a general education teacher and school nurse,
- updates on Student's present levels of performance, progress on goals, consideration of the new assessment data, and
- outside medical information.

As of January 30, 2023, Student had three new completed assessments from October 2022 and January 2023, in speech and language, physical therapy, and deaf and hard of hearing, and a new January 2023 home and hospital instruction request that it failed review and consider with the IEP team, including a member with medical expertise, such as a school nurse. The January 30, 2023 IEP failed to base the offer on Student's individual needs, as Lemoore Union did not have the proper participants such as a school nurse and general education teacher present to give input, although Student spent most of Student's time in a general education setting and may have had new medical needs with a newly presented home hospital instruction request.

An IEP is like a contract and it may not be changed unilaterally. If a school district discovered that the IEP did not reflect its understanding of the parties' agreement, it was required to notify Parent and seek consent for any amendment. (20 U.S.C. § 1414(d)(3)(D), and (F); *M.C. v. Antelope Valley Union High Sch. Dist.*, 858 F.3d 1189, 1194 (9th Cir. 2017).) It failed to do that here and failed to attempt to include Parent in developing the new IEP offer as discussed below.

Thus, Lemoore Union unilateral changed the IEP offer. By unilaterally changing the annual IEP review to January 24, 2024, and the goal, services, modification, and

support dates to January 30, 2023 to January 29, 2024, a full year, Raven and Galindo developed a new annual IEP offer, and misused the amendment IEP process because this was done without Parent, an IEP team meeting, or other IEP team members in violation of the IDEA procedural requirements.

## LEMOORE UNION PREDETERMINED THE JANUARY 30, 2023 IEP OFFER AND PREVENTING PARENT FROM MEANINGFUL PARTICIPATING IN DEVELOPING IT

The IDEA requires school districts to ensure that the parents of disabled children are members of any group that makes decisions about their child's educational placement. (34 CFR § 300.327 (2006); 34 § CFR 300.501 subd. (c)(1) (2006).) School districts may not unilaterally predetermine a child's special education and related services before an IEP team meeting. (*Deal v. Hamilton County Bd. of Educ.* (6th Cir. 2004) 392 F.3d 840, 858., *cert. denied*, 546 U.S. 936 (U.S. 2005).) School administrators and staff must enter the IEP team meeting with an open mind and must meaningfully consider the parents' input. (*H.B., et al. v. Las Virgenes Unified School Dist.* (9th Cir. 2007) 239 Fed. Appx. 342, 344; see also, *Ms. S. ex rel G. v. Vashon Island Sch. Dist.* (9th Cir. 2003) 337 F.3d 1115, 1131.) A district may not arrive at an IEP team meeting with a "take it or leave it" offer. (*JG v. Douglas County School Dist.* (9th Cir. 2008), 552 F.3d 786, 801, fn. 10.)

However, school officials do not predetermine an IEP simply by meeting to discuss a child's programming in advance of an IEP team meeting. (*N.L. v. Knox County Schs.* (6th Cir. 2003) 315 F.3d 688 at p. 693, fn. 3.) District IEP team members also may form opinions before IEP meetings. However, if the district goes beyond forming opinions and becomes "impermissibly and deeply wedded to a single course of action,"

this amounts to predetermination. (*P.C. v. Milford Exempted Village Schools* (S.D. Ohio, Jan. 17, 2013, No. 1:11- CV-398) 2013 WL 209478, p.7.) A district's predetermination of an IEP seriously infringes on parental participation in the IEP process, which constitutes a procedural FAPE denial. (*Deal, supra*, 392 F.3d 840, 858.)

To avoid a finding of predetermination, there must be evidence the district has an open mind and might possibly be swayed by the parents' opinions and support for the IEP provisions they believe are necessary for their child. (See *Deal, supra*, 392 F.3d at p. 858; *R.L. v. Miami-Dade County School Bd.* (11th Cir. 2014) 757 F.3d 1173, 1188–1189.) This inquiry is inherently fact intensive.

Federal and State law require that a district must afford parents of a child with a disability the opportunity to participate in meetings with respect to the identification, assessment, educational placement, and provision of a FAPE to their child. (20 U.S.C. § 1415(b)(6) & (f); 34 C.F.R. 300.511 (2006); Ed. Code, §§ 56501, 56502, 56505; Cal. Code Regs., tit. 5, § 3082.) The IEP team must consider the concerns of the parent for enhancing the student's education, as well as information provided by the parent about student's needs. (20 U.S.C. § 1414(d)(3)(A) and (d)(4)(A)(ii); 34 C.F.R. § 300.324(a)(1)(ii) & (b)(1)(ii)(C) (2017); Ed. Code, § 56341.1, subds. (a)(2), (d)(3) & (f).) The United States Supreme Court has recognized that parental participation in the development of an IEP is the cornerstone of the IDEA. (*Winkleman v. Parma City School Dist.* (2007) 550 U.S. 516, 524 [127 S.Ct. 1994, 167 L.Ed.2d 904] ["[T]he informed involvement of parents" is central to the IEP process.]) Parental participation in the IEP process is considered "[a]mong the most important procedural safeguards." (*Amanda J. v. Clark County School Dist.* (9th Cir. 2001) 267 F.3d 877, 882 (*Amanda J.*))

A school district is required to conduct, not just an IEP team meeting, but a meaningful IEP team meeting. (*W.G. v. Board of Trustees of Target Range School Dist. No. 23* (9th Cir. 1992) 960 F.2d 1479, 1485, superseded on other grounds by statute (*Target Range*); *Fuhrmann v. East Hanover Board of Education* (3rd Cir. 1993) 993 F.2d 1031, 1036 (*Fuhrmann*).) "Participation must be more than a mere form; it must be *meaningful*." *Deal v. Hamilton County Board of Education* (6th Cir. 2004) 392 F.3d 840, 858 (emphasis in original). A parent who has an opportunity to discuss a proposed IEP and suggest changes, and whose concerns are considered by the IEP team, has participated in the IEP development process in a meaningful way. (*Fuhrmann, supra*, 993 F.2d 1031, 1036.)

Here, it is undisputed that the January 30, 2023 IEP offer was developed and determined outside the IEP team process and without a team meeting by Raven and Galindo only. Raven conceded no notice of IEP team meeting was sent to Parent for the January 30, 2023 IEP offer. And Parent received neither any notice nor participated in developing the January 30, 2023 IEP offer. And Raven revealed that only Raven and Galindo determined that all the same goals, services, modifications, and supports continued to be appropriate when they made the new annual IEP offer without reviewing the newly completed assessments and home hospital instruction documentation with the IEP team.

The same day, Raven drafted a prior written notice for the new annual IEP offer and Galindo attempted to hand-deliver it to Parent the same day, showing an unexplained urgency to complete this annual IEP offer for Student. Although it was

discussed with Parent the following day, participation after the fact is no substitute for IEP discussions, especially since the changes were already decided on in the new annual IEP offer. Further, the prior written notice stated:

"Please note that the above listed offer of services, program and accommodations, with the amended IEP Amendment dated January 20, 2023, (attached to this letter) is the currently proposed offer of FAPE for [Student], so that if you wanted to avoid the due process hearing in this matter, the attached IEP Amendment would be what you would need to sign with your full consent."

The prior written notice language and Raven and Galindo's behavior established that these "amendments" to Student's IEP were already predetermined on January 30, 2023, before Parent even knew about them.

The following day, Raven and Galindo met with Parent to discuss the IEP changes, but at no time during this discussion did they consider making any changes to this new annual IEP offer. The meeting was not a collaborative process between Lemoore Union and Parent, or other IEP team members. Rather, the meeting was a one-sided exchange. Raven and Galindo's purpose was to explain the new annual IEP offer and their justification for it, not to consider Parent's concerns. No evidence established that this meeting was a give-and-take with Parent.

Conversely, the evidence showed it was a take it or leave it offer. The arrangement the next day on January 31, 2023, to explain an already finalized new IEP offer and prior written notice reveal an indifference from Lemoore Union's duty to ensure parental participation and supports a finding of predetermination. The evidence showed that IEP

changes were non-negotiable, not based on Student's individualized needs but instead, for legal positioning, and that Parent had to sign the new January 30, 2023 annual IEP offer or they would go to due process hearing. However, this new annual IEP offer was not even at issue for the February 7, 2023 due process hearing at that time, showing the Lemoore Union's extreme tactics with Parent. Thus, Lemoore Union predetermined the January 30, 2023 annual IEP offer.

Lemoore Union maintained that it could make the type of changes it made to Student's IEP through an amendment IEP, and without notice or Parent involvement because Parent was refusing to attend IEP team meetings until Parent found counsel. Under narrow circumstances, a unilateral IEP can be appropriate, when

- a school district first attempts to develop the IEP in the context of an IEP team that includes the child's parents (20 U.S.C. § 1414(d)(10)(B); 34 C.F.R. § 300.321(a) (2007),
- that parents be given prior written notice of any revision to the IEP outside of an IEP team meeting (34 C.F.R. § 300.503(a), and
- that the new offer not be implemented without parental consent (20 U.S.C. 1415(j); 34 C.F.R. 300.518(a) (2006); *Anchorage School District v. M.P.*, 689 F.3d 1047, 1057 (9th Cir.2012) ("*Anchorage*")

Lemoore Union argues that was the case here.

In cases in which the Ninth Circuit has found predetermination or serious infringement on parental participation, the school district generally developed the entire IEP without any parental input, refused to accommodate the parents' requests to reschedule, or committed other serious errors in conjunction with the failure to secure



parental participation. In *Anchorage, supra*, 689 F.3d 1047, Parent failed to attend an annual IEP meeting and instead provided extensive written commentary on the school's IEP draft offer. The school district then chose to use a two year-old IEP, rather than continue the IEP process to consider the parents' input. The Ninth Circuit found this to be a substantive violation of the school district's obligation to have a revised IEP in place every year. (*Id.* at 1056.)

Similarly, in *Target Range*, the school district committed numerous procedural errors, including failing to bring the parents back to the table after they left the meeting in frustration. (*Target Range, supra*, 960 F.2d at 1484–85.) And, in *Doug C. v. Hawaii Department of Education* 720 F.3d 1038 (9th Cir.2013) (*Doug C.*), the court found that the school district failed to accommodate parent's IEP meeting scheduling requests.

Lemoore Union argued in its closing brief that it did allow for parental participation by maintaining Parent's prior participation at the March, May, and June 2022 IEP team meetings and that was sufficient to satisfy Parent participation for January 30, 2023 annual IEP offer, since they argue it is an amendment to the March 2022 IEP offer. Lemoore Union cited a Ninth circuit court case and two district court cases in support of this proposition.

It cites *K.D. v. Department of Education, Hawaii, (K.D.)*, 665 F.3d 1110 (9th Cir. 2011), where the parent consistently failed to respond to the school district's repeated attempts to schedule an IEP meeting, whereupon the district proceeded with the meeting and developed an IEP without parent. The court found no FAPE denial because the district's numerous documented efforts to work with the Parent to find a mutually agreeable time and place for meeting was sufficient to satisfy its duty under the IDEA to involve parents in the IEP process. (*Id.* at 1125.) This case is unlike the facts

in *K.D.* because Lemoore Union made no effort to engage Parent in developing the January 30, 2023 annual IEP offer, as Parent was not aware of it until the following day.

Lemoore Union also cited *N.R. ex rel. B.R. v. San Ramon Valley Unified School Dist.*, No. C 06–1987 MHP, 2007 WL 216323 (N.D.Cal. Jan. 25, 2007) (*N.R.*), where the parties experienced a breakdown in communication resulting in numerous due process complaints and stay puts, all while the school district attempted to satisfy its annual legal obligation to provide an updated IEP and placement for the student. The court found that the school district's unilateral IEP revisions after the conclusion of the annual IEP meeting did not deny the student's parents meaningful participation in the process because they had actively and extensively participated in prior meetings concerning the development of the challenged IEP. (*Id.* at 12-16.) The court also noted that the school district made every effort to include the parents in the process and that their exclusion from participation was due to their "conscious decision to stop cooperating with the District." (*Id.* at 12.)

The facts here are distinct from *N.R.*. Here, Lemoore Union already satisfied its obligation of providing an annual updated IEP offer to Student, which occurred between March and June of 2022. The January 30, 2023 IEP offer was a new annual new IEP offer as already discussed. Thus, Lemoore Union could not bootstrap prior parental participation from a previous IEP offer to this one under these facts.

At no time during the March through June 2022 IEP team meetings did Lemoore Union discuss even the possibility that the IEP offer would continue for 22 months with the same placement and related services. Further, those discussions occurred over seven to ten months earlier, and culminated into a complete IEP offer to Student by May 25, 2022, and finalized in June 2022. The March through June 2022 IEP offer

covered the time between the end of the 2021-2022 school year and most of the 2022 - 2023 school year. The January 30, 2023 IEP covered that time plus six months of the 2023-2024 school year. Additionally, Lemoore Union made no attempts to include Parent or discuss this decision at any time before January 31, 2023, after the development process was over. Thus, this case is unlike *N.R.*

Finally, Lemoore Union cites *Cupertino Union School District v. K.A.*, 75 F.Supp.3d 1088 (N.D. Cal. 2014) (*Cupertino*). In *Cupertino*, the court found that district did not seriously infringe upon the parents' opportunity to participate and did not predetermine the offer, although the school district failed to hold a continued IEP team meeting and completed its FAPE offer without parent because parent did not want to participate in the IEP process indefinitely. The court further found because substantial discussion of proposed goals at an IEP meeting with team members that arrived with open minds, occurred during the first meeting, and parent's refusal to return to complete the IEP offer did not infringe upon parent's ability to participate. (*Id.* at 1103.)

Lemoore Union maintained, like *Cupertino*, Parent refused to meet with them for months and did not want to meet with them until counsel was retained and later until after the hearing resolved. Thus, it argued, the IEP changes without notice was the proper vehicle under the circumstances. This argument fails.

Unlike in *Cupertino* where a final IEP offer had not been made to Student and it needed to complete its annual IEP review requirement, here, Lemoore Union completed its IEP offer to Student by May 2022, and did not need to make changes to the IEP and

violate a procedural requirement of parental participation to satisfy the annual IEP review offer requirement. It also failed to hold an IEP team meeting with appropriate team members such as a school nurse and general education teacher when it made its new annual IEP offer on January 30, 2023, unlike in *Cupertino*.

Additionally, Lemoore Union failed to disclose to Parent that it was changing the IEP offer to Student. All the previous discussion from January 27, 2023, to January 30, 2023, and documentation regarding attempts for communication between Parent and Lemoore Union related to discussing the upcoming due process hearing and motion to amend, not developing a new annual IEP offer to Student. Lemoore Union made no attempts to include Parent in the process of developing a new IEP offer and thus, is also distinguishable from *Cupertino*. Here, the facts are like *Anchorage* where the school district failed to include Parent in the entire IEP development process, and *Target Range*, where it violated numerous procedural requirements and failed to bring Parent back to the negotiation table or document its attempts to do so.

Lemoore Union finally argued that if it did violate Parent's procedural rights, it did so to avoid a more serious FAPE denial. For this proposition, Lemoore Union correctly cited *Doug C* that determined when confronted with such a choice between "complying with one procedural requirement of the IDEA or another," the District was under an obligation to "make a reasonable determination of which course of action promotes the purposes of the IDEA and is least likely to result in the denial of a FAPE." (*Doug C.*, *supra*, 720 F.3d at 1046.). However, the argument is misplaced under these facts.

Lemoore Union's January 30, 2023 actions failed to result in compliance with an IDEA procedural requirement to sacrifice compliance with another one. It also was not

faced with the untenable position of choosing between making an IEP offer without further parental input or violating their obligation to have an updated annual IEP offer.

Here, Lemoore Union had almost two more months to meet its annual IEP review requirement, and it had already developed and communicated its annual IEP offer to Student by May 2022. Thus, no choice had to be made to violate the procedural IDEA requirements. Despite this, Lemoore Union hastily developed and completed the January 30, 2023 new annual IEP offer, while failing to give Parent notice, with no IEP team meeting, and no parental participation. This new annual IEP offer was developed not to avoid a bigger procedural violation but occurred for the sole purpose of placing it in a better legal position against a pro per litigant. And while it sent out the notice for the annual IEP set for February 20, 2022, it was never convened, and no evidence was presented that Lemoore Union made attempts to conduct an annual IEP review with or without Parent at that time on January 30, 2023, when this annual IEP offer was developed and determined. Thus, the facts here are distinguishable.

Accordingly, Lemoore Union predetermined the January 30, 2023 annual IEP offer. Predetermination is an automatic violation of a parent's right of participation under the IDEA. Where predetermination has occurred,

"regardless of the discussions that may occur at the meeting, the school district's actions would violate the IDEA's procedural requirement that parents have the opportunity 'to participate in meetings with respect to the identification, evaluation, and educational placement of the child.'"

*(H.B. v. Las Virgenes, supra, 239 Fed.Appx. at p. 344, quoting 20 U.S.C. § 1415(b)(1).)*

Thus, Lemoore Union's predetermination of the January 30, 2023 annual IEP offer significantly infringed upon Parent's right to meaningful participation in the decision-making IEP process.

Lemoore Union lastly makes the argument that if any procedural violations took place, they failed to rise to a substantive FAPE denial. As shown above, the procedural violations above, including undermining the IEP annual review process; developing a new annual IEP offer without Parent and the IEP team, for legal positioning and in private; predetermining the annual IEP offer; and the failure to include Parent in the IEP development process; seriously infringed upon Parent's ability to participate in the IEP decision-making process. Thus, Lemoore Union failed to prove that it offered Student a FAPE under these circumstances.

Lemoore Union filed for due process hearing on August 5, 2023, to defend its March through June 2022 IEP offer then amended the complaint on February 1, 2023, to also defend its January 2023 IEP offer. However, it requests to implement the January 2023 IEP offer only. As shown above, the January 2023 IEP offer was a new annual IEP offer and not an amendment IEP as maintained by Lemoore Union. However, Lemoore Union's issue requests a determination that the series of IEPs from March 2022 through January 2023 are FAPE. Thus, Lemoore Union failed to meet its burden in proving that these IEPs offered Student a FAPE, because the January 30, 2023 procedural defects substantially impeded Parent's meaningful participation in the IEP development process.

(This space intentionally left blank. Text continues on following page.)

Because Lemoore Union failed to establish procedural legal compliance, this Decision does not reach a determination on Student's other procedural violation claims and all the substantive claims. When an IEP offer fails as a matter of procedure, no further exploration of the substantive appropriateness need take place. (*Target Range, supra*, 960 F.2d 1479, 1485.). Thus, a substantive analysis under the two-part inquiry is not required.

## CONCLUSIONS AND PREVAILING PARTY

As required by California Education Code section 56507, subdivision (d), the hearing decision must indicate the extent to which each party has prevailed on each issue heard and decided.

### ISSUE:

The IEP dated March 29, 2022, and continued May 25, 2022, and June 28, 2022, and amended on August 9, 2022, and January 30, 2023 IEP, failed to offer Student a FAPE.

Student prevailed on the sole issue for hearing.

## ORDER

1. Lemoore's claim for relief is denied. Lemoore may not implement the May 25, 2022, and June 28, 2022, and amended on August 9, 2022, and January 30, 2023, and determined to be a new annual IEP offer, without parental consent.

## RIGHT TO APPEAL THIS DECISION

This is a final administrative decision, and all parties are bound by it. Under Education Code section 56505, subdivision (k), any party may appeal this Decision to a court of competent jurisdiction within 90 days of receipt.

CYNTHIA FRITZ

Administrative Law Judge

Office of Administrative Hearings